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No: **07-271**

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SUPREME COURT, U.S.

IN THE SUPREME COURT OF THE UNITED STATES

Prasad Bikkani ---Petitioner

v.

Rotan E Lee
North East Ohio Neighborhood Health Services (NEON)
Total Health care Plan, Inc (THCP)
Scheur Management Group (SMG), Barry Scheur, Robert McMillan, Robert Eichler, Jimmy Dee
Ruth Aaron
Brenda Stevens Marshall, Frank Kimber
Moreno Miller
Paula Phelps
Arnold Pinkney/Beptin & Associates Inc
Joseph Davis

Respondents

On Petition For Writ Of Certiorari
To The Court of Ohio Supreme Court
Case No. **2006-2302**

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

Table of Contents	i
Table of Authorities	ii
Introduction	1
Reasons for granting the writ	3
Conclusion	6
Certificate of Service	10

TABLE OF AUTHORITIES

Content	Page
Analytica, Inc. v. NPD Research Inc., 708 F.2d 1263 (7th Cir. 1983).	**8**
Kala v. Aluminum Smelting & Refining Co., Inc. (1998), 81 Ohio St.3d 1 at 5	**7**
Miles Landing Homeowners Association v. Bikkani et al (8th Dist cv04-519870, CA86356 & 86942, OH 2006-1694)	**8**
State ex rel. Leslie v. Ohio Hous. Fin. Agency, 105 Ohio St.3d 261, (2005);	**7**
Westinghouse Elec. Corp. v. Kerr-McGee Corp., 580 F.2d 1311, 1321 (7th Cir. 1978)	**7**
RC 5311.18	**4, 5**
RC 2323.51	**5**
RC 2323.52	**5**
Canon 5, Canon 4, Canon 9	**6, 7**
Other	
IRC 4941(d)	**2, 3, 9**

Note: For referencing convenience the following notation was used:
JU1107: Exhibit X refers to corresponding Exhibit of June 11, 2007 filing in Ohio Supreme Court OH2006-2073
D1806: Exhibit X refers to pertinent Exhibit of December 18, 2006 filing on OH2006-2073 Ohio, Supreme Court
D0506: Exhibit X refers to corresponding Exhibit of on or around December 5, 2006 filing
AU1307: Exhibit X or P# refers to corresponding Exhibit or Page# of August 13, 2007 filing in OH2006-2302

I. Introduction

Attorney Matthew Fitzsimmons who is representing North East Ohio Health Services (NEON) and Total Health Care Plan Inc (THCP) is a Board of Trustee of NEON. Some other respondents, Brenda Marshall, Frank Kimber, Arnold Pinkney, Moreno Miller, and Joseph Davis were Trustees of an independent non-profit corporation THCP (even per Mr. Fitzsimmons September 2005 filings in the trial court) and unrelated to NEON. In late 1998 when THCP's CEO, James Turner died, Mr. Fitzsimmons still a trustee of NEON and without disclosures of his intent to THCP Trustees, he joined with Scheur Management consultants (collectively SMG) in a way of doing service to THCP. As the pleadings and filings evidenced and as Trustee respondents agree, Mr. Fitzsimmons blocked a $1 million dollars note owed to THCP by NEON when the THCP Trustees demanded the payment. In addition converted THCP into NEON in late 2001 or soon after, without the knowledge of THCP trustees. The instant case involved with Constitution Due process and Federal Supremacy laws involving Bankrupt 7 liquidation of a corporation, **AU1307: Exhibit C9-C43**.

In the Brief in opposition, trustee cum attorney Fitzsimmons did not deny his wrong doings nor did he able to support how and why he is continuing in the cases with his pecuniary benefits and continue misrepresenting the facts to side the outcome in his favor. Like it was detailed, somewhat, in the petition for certiorari, Trustee cum attorney Fitzsimmons used MLHOA case for his purpose to declare petitioner as if vexatious

in Ohio Supreme Court, he caused MLHOA to file a duplicate claim in his wife's Rocky River court in early 2007, and he himself filed a separate case in Cuyahoga County Common Pleas Court using NEON/THCP as his clients with his IRC 4941(d) self-dealing purpose to declare Petitioner and his wife to be declared as vexatious litigants, **AU1307: page 1(b), 5(b);** AU1307: **Exhibit S1-S2**, especially by citing the MLHOA cases in a way of harassing and intimidation. In late August 2007, his wife recused herself as a judge from the Rocky River case citing that her husband is representing the opposite parties. How far a pecuniary benefit involved trustee cum attorney tilts law to his own purpose? Is it a legal standard to represent parties in a case/court where spouse is a judge, to cause judge to be recused? There is no doubt that it involves more than that and trustee cum attorney Fitzsimmons does not bound to any law, unfortunately. Trustee cum attorney Fitzsimmons materially misrepresenting the facts from one court to the other court, representing NEON/THCP with severe conflicts of interests and with his pecuniary benefits ahead. Some of the Matthew Fitzsimmons's involvement issues are listed with the supporting documents, hundreds of paragraphs, JU1107 and D1806 filings, and those includes as listed in Certiorari:

As the evidence is in front of court, Matthew Fitzsimmons in collaboration with other Holders **personally selected** and ousted Petitioner unlawfully, as he stated please see, D1806: **Exhibit A1, A2**, D0506: **Exhibit Q2**, **"...[he] identified personnel for the reduction-in-force...."** Thus he acted in operational duties and not as an attorney for a company as many of the hundreds of paragraphs highlighted to it, D0506: **Exhibit R.** Matthew Fitzsimmons is a trustee of a corporation, NEON, D0506: **Exhibit A Para I (3)** of John Campbell's July 21, 1999 letter is further evidence which states in part "that an "alliance document" was to result from discussions between Mr. Lee **and our Trustee, Mr. Fitzsimmons"** [emphasis added] and the NEON board/officers expected him to be interacted with THCP as a trustee of NEON and without self-dealings and there are no disclosures from him to NEON's board as if he had a self business with THCP to oust Petitioner from THCP payroll and or from NEON payroll, but he did without corporate formalities either. Mr. Fitzsimmons engineered a materially false affidavit in September 2005, **D1806:**

Exhibit D in contrary to **D1806: Exhibit E**, and submitted to court and caused perjury, in an effort to dismiss the case then stating Petitioner was never an employee of NEON/formerly known as CNHSI, because he had pecuniary benefit in ousting Petitioner, D1806: **Exhibit A, Exhibit E9, Exhibit E10**, and decided to discredit to cause perjury in the court; when in fact hired by NEON, formerly known as CNHSI, **D1806: Exhibit E1-E6**. While ousting Petitioner improperly, Matthew Fitzsimmons withheld over $20,000 unused vacation pay for over a year with a black mail, to sign a separation agreement to cover his illegal activities, and too by claiming as if the waiver requirement is mandatory even to pay unused vacation for a 40+ age category. Mr. Fitzsimmons engineered to change name of the department from MIS to BIS, D1806: **Exhibit E6,** and caused to tell inquiring agencies as if the department was eliminated. Ultimately, NEON trustee, attorney Fitzsimmons converted THCP Corporation from THCP trustees to his/NEON fold, D1806: **Exhibit H-W**.

Attorney Fitzsimmons got rewarded for concealing the facts and got rewarded for hundreds of counts of professional misconduct and for wrongdoing through bill/sanctions against innocent victim/Petitioner. Without an opportunity to bring a sound appealable order to court's jurisdiction against wrongdoers, many more victims will suffer.

II. Reasons for granting the writ

Trustee Cum attorney Matthew Fitzsimmons continued to violate laws and ethics of the court, and abusing the court system in an effort to his pecuniary benefit. Attorney Matthew Fitzsimmos improperly used for his advantage the MLHOA case of Bankrupt/liquidated Ohio corporation and made it appear as if opposing the illegal acts as if those are vexatious, just by pleading with materially false representations. Trustee cum attorney Fiztsimmons continue to represent with the forbidden self-dealings and in violation of IRC 4941(d). With Mr. Fitzsimmons's pecuniary benefit, he is controlling non-profit corporations as if those are his clients, violated basic judiciary system, and continues to influence the court system to declare the innocent victim as a vexatious litigant. This case should not be a precedent to make other innocent people as victims and too in the hands of a

pecuniary benefit involved attorney who supposed to safeguard the judiciary system. Pro Se, Prasad Bikkani, is confident to secure an out of state attorney representation in front of this honorable Supreme Court, if further attempts to hire an Ohio attorney fail due to the influential respondent(s). If supplemental Brief is appropriate the attorney firm will file such a brief too and the pro Se pleads with the honorable court to take up the case due to constitutional issues and great importance of public interest.

On one hand, trustee cum attorney Fitzsimmons claiming as if the MLHOA case which he used for his advantage to make it appear as if Pro Se improperly opposed the illegal extortion. Upon the facts were proven the defunct/liquidated status of MLHOA, the respondent is claiming as if it is a state issue and as if it is not a Federal issue and at the same time improperly stating as if it is an association fee. Truthfully, it is a Federal issue to supersede Federal Supremacy laws and to supersede uniform bankruptcy laws. If the case is not final and appealable at this juncture when it could be, and continuously against forbidden self-dealings trustee cum attorney Fitzsimmons representing on behalf of his alleged clients including NEON/THCP, and against other clients, who are other respondents. Though trustee cum attorney Fitzsimmons extensively used MLHOA for his benefit, he stated in the BRIEF as if the case is not applicable. Mr. Fiztsimmons continuously used and using against Pro Se to declare as vexatious litigant, while he claiming as if a bankrupt/liquidated/defunct corporation right as a state right, but infact those involved with federal Supremacy and Federal Bankrupt/liquidity involved uniform laws too.

Trustee cum attorney Matthew Fitzsimmons to cover-up his tracks, he used MLHOA issue in the courts stating as if petitioner is maintaining frivolous claim/appeal and or vexatious as petitioner contested in MLHOA case stating RC 5311.18 should not be superior over Federal Supremacy Bankruptcy laws. Trustee cum attorney Fitzsimmons used one court against another court (trial court, appeal court, Ohio Supreme Court) to use opinions/decisions contrary to the facts with half-truth to no truth and obtained judgments to cover his tracks and, used MLHOA case for his benefit. Holders violated constitution for their pecuniary benefit

and their interests ahead of judiciary system and ahead of their clients' interest and they should not be rewarded.

The decisions associated with the instant case conflicts with decisions of Federal courts and many state courts of last resort as they do not allow trustee cum attorney who caused the underlying case to be continued to represent in the court to further undermine the judiciary system especially when involved in causing the underlying case and too can not benefit through rulings in favor of bankrupt/liquidated/DEAD corporation or contesting against such extortions, though court might have inadvertently granted in favor other commingled attorneys. By doing so, unfortunately, the attorneys self dealings acts are being legalized and it is unfortunate that the decisions involved in overriding superseding the Federal bankrupt chapter 7/liquidation of corporations laws through RC 5311.18 and for contest on such issues and on contest against extortion punishing with frivolous conduct and or vexatious conduct in favor of the instant case which referred to the other self dealing attorneys' acts. The current judgments against victim/Petitioner does not support RC 2323.51 and or RC 2323.52 and it is very unfortunate

As detailed in Certiorari, Victim/petitioner's Due process rights were violated, where expected the protection and assistance, by punishing rather than rewarding for the sacrifice and for the good faith effort, both by Appeal court and further punishment by Ohio Supreme court just because an attorney who is a member of US Supreme Court had high influence over the Ohio court system as he was able to conceal the facts in furtherance of his pecuniary benefit and can go to any extent by engaging in a conduct unbecoming a member of the Bar of the court. Ohio RC 5311.18 superceding US Federal bankruptcy laws, or alternatively, Ohio state court of last resort did not interfere to avoid conflicts between state statute/court decisions against federal supremacy laws. A state court has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

The sample hundreds of counts listed with 30+ Disciplinary Rule violations, and dozens of Fiduciary violations listed various times, including in June 11,2007 filing highlights facts about trustee cum attorney Fitzsimmons. This case deserves appropriate treatment as one of the great importance of public interest and involved with substantial constitutional issue, Due process violations, prejudice, and constitutional amendment violations. With a good faith Petitioner brought to the court's attention for justice, Attorney Fitzsimmons should not be rewarded for wrongdoing with bill/sanctions against Petitioner, and judgments should be in Petitioner's favor.

Petitioner had meritorious claim, with half-truths and in violation of dozens of Disciplinary rules and pertinent laws Attorney who is a Board of Trustee caused tortious interference, ousted Petitioner even whom represented in the past, caused victim in the process, and continue to cause damages by repeatedly filing with half-truths.

IV. Conclusion:

As the record evidences trustee cum attorney Fitzsimmons could not deny his material misrepresentation, Constitution violation, and severe conflicts, which also affected the constitution. The Certiorari should be granted and Trustee cum attorney should not represent and continue to represent with his pecuniary benefits. Some of the issues were listed in Conclusion section of Certiorari. Attorney Fitzsimmons/Board member severely violated Disciplinary Rules and Fiduciary duties for over a dozen defendants in the instant case and to Petitioner as all are his clients/ex-clients/ or express attorney-client relation, thus strict standards of Canon 5 is applicable and he did not deny this on his opposition BRIEF. Mr. Fitzsimmons has been privy to THCP, NEON, Dr. Marshall, Mr. Kimber, Mr. Lee, Mr. Scheur, Ms. Aaron, SMG, Mr. McMillan, Ms. Phelps, Mr. Pinkney, Mr. Davis, and Petitioner's; confidences, thus violation under Canon 4 and Mr. Fitzsimmons should have been disqualified from representing the defendants in the instant case, and he did nit dispute this fact. In the course of the former representation Mr. Fitzsimmons acquired information related to the subject matter of his subsequent representation, and Mr. Fitzsimmons should be disqualified under Canon 9 of the Code of Professional Responsibility. Trustee cum

attorney Fitzsimmons did not deny the facts that Mr. Fitzsimmons, Attorney Dennis Roth, Attorney Brian Green violated Canon 4, Canon 5 and Canon 9. Attorney Brian Green is an attorney of disqualified Attorney Dennis Roth. It is clear that under Canon 9 as well as Canons 4 and 5, Matthew Fitzsimmons should be disqualified. Similarly the Canon 4 of the Ohio Code of Professional Responsibility imposes a duty on Matthew Fitzsimmons, and on Dennis Roth to protect THCP's, Petitioner's, THCP Board of Trustees, NEON's, and SMG defendants as all of them have privity with them confidences and secrets including to related to Petitioner's wrongful termination claim, *State ex rel. Leslie v. Ohio Hous. Fin. Agency*, 105 Ohio St.3d 261, (2005); DR 4-101(A); *Kala v. Aluminum Smelting & Refining Co., Inc.* (1998), 81 Ohio St.3d 1. Using the direction in Disciplinary Rule 5-105(D) and by Canon 9's warning that "A Lawyer Should Avoid Even the Appearance of Professional Impropriety" Mr. Fitzsimmons getting violated in all aspects.

Once again, unfortunately, Mr. Fitzsimmons contaminating the law of attorney disqualification, which is a fundamental importance to the legal community and to our society. Mr. Fitzsimmons using confidential information that he has obtained from a client against that client on behalf of another one and representing an adversary of his former clients of the subject matter of the two representations is not just "substantially related," but same. Mr. Matthew Fitzsimmons not only had access to but also received confidential information of **Petitioner**, THCP, board of directors, officers, to NEON, board of directors, officers, and above a dozen defendants in the instant case, and trustee cum attorney Fitzsimmons in his BRIEF in Opposition denied none of these. In the instant case Mr. Fitzsimmons and his firm popped up as counsel to an adversary of Petitioner, and other defendants following illegal conversion of THCP under NEON and representing against THCP board of directors officially. Thus Mr. Fitzsimmons's interference under the name of an attorney to two defendants in the instant case is not just the representations that are substantially related to past services/obtained confidences from others but totally and directly related. Consistently with this distinction, *Westinghouse Elec. Corp. v. Kerr-McGee Corp.*, 580 F.2d 1311, 1321 (7th Cir. 1978) -- like this is a case where the

same law firm represented adversaries in substantially related matters -- states that it would have made no difference whether "actual confidences were disclosed" even if the law firm had set up a "Chinese wall" between the teams of lawyers working on substantially related matters, though the two teams were in different offices of the firm, located hundreds of miles apart. Mr. Fitzsimmons couldn't have created a Chinese wall in his mind between his multiple violations with various clients. Since it is a direct relationship, substantial relationship inquiry is not needed.

The fact that Mr. Fitzsimmons made stubbornness in resisting disqualification is improper, *Analytica, Inc. v. NPD Research Inc.*, 708 F.2d 1263 (7th Cir. 1983). Somehow **Appeal court and this court** got influenced by Mr. Fitzsimmons and awarded sanctions against Petitioner even without taking up the case to which Petitioner sought justice on basic principle of law, fairness to all litigants believing that fairness requires that any law firm and/or individual of professional impropriety, questionable ethics, or misconduct with the given the opportunity to rebut any and all adverse inferences which may have arisen by virtue of a prior filings. Unfortunately, instead of Matthew Fitzsimmons getting disqualified, innocent Petitioner get sanctioned, suffered due process, due process guarantees, fundamental fairness to victims/litigants.

The legal profession demands adherence to the highest standards of honesty and integrity. Mr. Fitzsimmons created victim, submitted materially false affidavit to court, had many violations including deliberately withholding that which by law they were required to reveal. In the instant case, Attorney Fitzsimmons neglected **16** clients, and made false statements. Attorneys indefinitely suspended in the similar or lesser cases where an attorney repeatedly neglected multiple clients', made false statements and or acted dishonestly.

WHEREFORE, though trustee Fitzsimmons claiming MLHOA cases for his advantage improperly and besides he knowing the facts that Petitioner came to Appeal with good faith following *Miles Landing Homeowners Association (MLHOA) v. Bikkani* (cv04-519870) in which MLHOA attorney's with Unfortunately trustee cum Attorney Fitzsimmons being submitted

materially false affidavit to the court in September 2005 itself in the instant case, and blocking deposition from whom Mr. Fitzsimmons submitted affidavit by preparing it, and by representing co-trustee MT Miller and by blocking his deposition for Mr. Fitzsimmons' advantage; and being personally involved, representing multiple parties. Petitioner believed that law supports the appeal at least under the contest to modify the law if needed, and with the experience of MLHOA case and as difficult to safeguard the integrity of process as many key facts are being altered by involved attorneys and in good faith believed that Disciplinary Rules and pertinent laws supports the appeal. Petitioner sincerely pleads with the Honorable court not to reward Attorney Matthew Fitzsimmons with bill/fee/sanctions/verdict against innocent victim Petitioner, good faith and cause exists to plead for rescue from Court to seek for justice. And not benefit him with the further advantage of forbidden self-dealings of a non-profit corporation. Being Trustee, Matthew Fitzsimmons tortiously interfering business relationships, controlling the corporation(s) for his pecuniary benefit, with the forbidden self-dealings, Attorney Fitzsimmons is manipulating the events as he deems fit. Mr. Fitzsimmons should not be rewarded for wrongful acts but he should be disciplined. Matthew Fitzsimmons' bills should not be rubbed on victim/petitioner.

In the instant case, trustee cum attorney Fitzsimmons represented with 35 Disciplinary Rule violations, over two dozen conflicting issues/parties, used the MLHOA case appeals of petitioner to his advantage to claims as if appeals are frivolous and if petitioner is vexatious and got monetary sanctions too to cover-up his IRC 4941(d) forbidden self dealings, further affected and raised the questions about jurisdiction of US Supreme Court, legal authority of Federal Government over sates through Federal Supremacy laws, constitutional guarantees of citizens. Without such review, it affects entire nation by letting the current judgment to stand and in violation of Amendments listed in the petition. This case will be a great interest to the US/Federal Government too due to Federal Supremacy laws violations and the US Attorney General should participate too. Without such a review Ohio Vexatious law the way applied against victim in an effort to cover-up pecuniary benefits of a trustee cum attorney causes precedence

to further victimize the victims. Without such a review, the pecuniary benefit involved law violators continued to encourage the violations of Federal Supremacy laws and uniform Federal bankruptcy laws. Pro Se is confident to secure an attorney to represent in the instant case to serve justice, and will initiate to retain out of state counsel, if in the county/sate efforts continue to fail. Trustee cum attorney Fitzsimmons didn't deny the facts that he avoided discovery under attorney-fraud exception, unduly pressurized the appeal court (without disclosing that he had a relative as appeal court judge), unusually obtained as if the appeal is frivolous, then used instantly to pressurize the trial court which vacated the continuance and instantly dismissed the case, without affording to continue with the discovery either. Though Pro Se had difficulty to obtain an attorney as the case is involved with ethics and involved with an highly influential attorney, perhaps NEON/THCP could not find an attorney too as trustee cum attorney Matthew Fiztsimmons continuously controlling those and unless those entities represented by independent attorneys, trustee cum attorney continue to obstruct the justice, continue to materially misrepresent the facts and continue to cause severe harm to the judiciary system. Once again, Pro Se hopes to hire an attorney who can present important case with clarity to the judiciary system.

Respectfully submitted,

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Certificate of Service

A copy of the foregoing mailed by U.S. mail on October 9th to all the parties/respondents, and 3 copies to Matthew Fitzsimmons. In addition served Ohio Attorney General as constitutional issues involved, copy to Special Counsel of AG/ODI for THCP, a copy to Attorney Keith Barton on behalf of MLHOA-Holders.

Prasad Bikkani, Pro Se